GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Tribal Welfare Department – Appeal Petition filed by Smt. B. Lokeswari W/o K. Praveen Kumar, Occ: Senior Inspector, Nadyal, Kurnool District, under Section 7(2) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (A.P. Act No.16/1993) against the proceedings Rc.C6/576/N/2015, dated 01.05.2016 of the Collector & District Magistrate, Kurnool, in cancellation of her ST-Yerukula caste certificate – Appeal Petition dismissed - Orders - Issued.

DEPARTMENT OF TRIBAL WELFARE (CV)

G.O.Ms.No.21, Dated.16.03.2024.
Read the following:-

1. Proceedings of the District Collector, Kurnool, Lr.No. Rc.C6/576/N/2015, dated 01.05.2016.
2. Appeal Petition filed by Smt. B. Lokeswari W/o K. Praveen Kumar, Occ: Senior Inspector, Nadyal, Kurnool District, dated 23.05.2016.
3. Govt. Memo No.257869/CV.2/2016, dated 02.12.2016 & 29.05.2017.
4. From the Collector & District Magistrate, Lr.No.RC.C6/455/M/2017, dated 15.06.2017.
5. Govt. Memo No.257869/CV.2/2016, dated 28.11.2017, 31.01.2018 & 03.01.2024.

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ORDER:

In the Proceedings 1st read above, the Collector & District Magistrate, Kurnool had issued orders cancelling the ST-Yerukula community certificate of Smt. B. Lokeswari W/o K. Praveen Kumar, obtained from the Mandal Revenue Officer, Allagadda on 28.06.1999, 04.07.2001 and 30.07.2003 vide 339/29.06.1999, 305/05.07.2001 and 408/30/07/2003 to Smt. B. Lokeswari.

2. In the reference 2nd read above; Smt. B. Lokeswari W/o. K. Praveen Kumar, has filed Appeal Petition before the Government against the Proceedings of the District Collector, Kurnool. After examining the said Appeal Petition, Government have admitted the same and Para-wise remarks on the grounds filed by the Appellant along with connected records were called for from the District Collector, Kurnool vide Govt. Memo 3rd read above.

3. In the letter 4th read above, the Collector & District Magistrate, Kurnool has furnished the para-wise remarks on the Appeal Petition filed by Smt. B. Lokeswari W/o. K. Praveen Kumar.

4. The said Appeal Petition has been posted for hearing before the Hon'ble Appellate Authority on several dates and finally on 20.01.2024 duly informing the same to the Appellant and the Counsel for the Appellant vide reference 5th read above. During the course of the hearing and on perusal of the records/ the copies of evidences/ academic record/ grounds filed by the Appellant/ Para-wise remarks submitted by the District Collector, Kurnool and proceedings of the District Collector, Kurnool, dated 01.05.2016, the Appellate authority has observed that;

I. The present Appeal is filed by Smt B. Lokeshwari, W/o K. Pawan Kumar, Age 36 years, Occ. Senior Inspector at Sub-Divisional Co-operative Office, Nandyal, under Section 7(2) of Andhra Pradesh (SCs & STs) Regulation of Issue of Community Certificate Act, 1993 being aggrieved by the impugned proceedings of the District Collector, Kumool District, Kumool, Andhra Pradesh State issued inRc.C6/576/M/2015, dated 01-05-2016, cancelling the social status caste certificate as ST (Yerukala) obtained from the Mandal Revenue Officer, Allagadda on 28.06.1999, 04.07.2001 and 30.07.2003 vide 339/29.06.1999, 305/05.07.2001 and 408/30/07/2003.

II. The matter came up for hearing finally on 20-01-2024 in the presence of the counsel for the Appellant and the concerned officers. The counsel for the Appellant submitted his oral arguments and also referred an order of High Court passed in W.P. No. 20829 of 2007 and 1634 of 2008 (2010 (2) ALD 333) in support of the claimants. The District Collector / 1st respondent submitted para wise remarks. Heard both sides. The following order is made after perusal of the material records available on the record.

[Contd..on P.2]

III. The contention of the appellant is that the impugned order is illegal and contrary to law and that she is only child to her father namely B. Nagaraju, native of Allagadda, belongs to Yerukala and his profession is Basket making while her mother's name is Smt. K. Rama Thulasamma, native of Suddapalle Village of Peddamedium Mandal, Kadapa District, belongs to caste Kammara. And that the Appellant is the only child to them and that her father deserted her mother due to differences among them, when the appellant was studying 4th class and till now his whereabouts not known to her and later her mother went to her parent's house and lived with her parents for their livelihood and that there is no dispute regarding the paternity of the appellant and that the G.O.Ms,No.371, dated 13.04.1976 is only applicable for spouse but not to her because her identify as a tribal, inherited from her father and that after an enquiry the Tahsildar, Allagadda issued ST (Yerukala) Caste certificate to her on 27.06.1999 and the same was mentioned in all her study certificates and further certificates as S.T (Yerukula) were also issued on 05.07.2001 and 30.07.2003 by the Tahsildar and requested to set aside the order passed by the 1st respondent / District collector herein in the interest of justice.

IV. The District Collector has furnished para-wise remarks and, stated that the A.P. S.T. Employees Association, Kumool submitted a representation to him against the appellant stating that she secured a Government Job by producing a false caste certificate as Yerukala even though she is not belonging to Yerukala caste and the case was referred to the Chairman of the Scrutiny committee formed at District (District Level Scrutiny Committee (DLSC) Under Rule 8, for an enquiry. The findings of the DDLSC are that the appellant was brought up by her mother, who belongs to Kammara caste and following the customs and traditions of her mother and the appellant also attended the enquiry on 21.08.2015 before the DLSC and produced 4 witnesses who all belonging to Yerukula (ST) in support of her claim. After an enquiry the DLSC found that the appellant here in is following the customs & traditions of her mother and that after the disappearance of her father from their life, and that there are no cordial relationship from the members of her paternal side and she could not produce any evidence in specific to Yerukala Caste, except the certificate issued by Tahsildar and the depositions of the witnesses examined show that there are no family relations with the appellant and the appellant also stated that he married Sri K. Pavan Kumar who belongs to Ediga caste/Non ST.

V. The District collector has further submitted that a show cause notice was issued to the Appellant after receiving the report of the DLSC and the appellant had appeared before the Collector 05.03.2016 and given her deposition without producing any additional evidence.

VI. The collector has further submitted that the G.O.Ms.No.371, dated 13.04.1976, says "it is the recognition and acceptance by the society of the children born out of a marriage between member of Scheduled Tribe with an outsider, which is main determining factor irrespective of whether the tribe of matriarch or patriarchal. The final result will always depend on whether the child was accepted as member of the Scheduled Tribe or not". Hence the contention is that she inherited her caste from his father by blood relation is not acceptable and that the appellant is born to a tribal and non tribals and that appellant failed to prove that she belongs to Yerukula (ST) Caste and accordingly he cancelled her certificate.

VII. The background of case and rival submissions give rise to following points for consideration.

"Whether the Appellant is entitled to claim the social status of Yerukula-ST being the child of mother -Non ST and father- ST? and whether the Go Ms.No.371, Education and Social Welfare (B2) Dept., dt.13.4.76 has any relevance to the facts of the case, being the child of mother -Non ST and father- ST?

VIII. The agreed facts are that the father of the appellant belongs to ST-Yerukula while her mother is a Non Tribal who belongs to Kammara caste. The contention of the Respondent/District collector is that the benefit of G.O.Ms.No.371, Education and Social Welfare (B2) Dept., dt.13.04.76 shall be given if offspring is born out of such marriage and has been brought up in the same environment and on the acceptance of that ST community as a member of Scheduled Tribe.

[Contd..on P.3]

IX. In this case the evidence shows that the appellant who is an offspring who was brought up by her mother nontribal but not by her father who admittedly had disappeared from the life of the appellant and her mother when the appellant was studying 4th class and his whereabouts are not known. The witnesses who belong to ST-Yerukula were examined on behalf of the appellant who deposed corroborating a fact that there areno family ties with the appellant.

X. On contrary the appellant has taken a stand that the GO.Ms.No.376 is not applicable to her case, and it is only applicable to the spouse not to her since her father is belonging to ST-Yerukula.

XI. The counsel for the Appellant has referred a ruling given by the Hon'ble High court of Andhra Pradesh in a case held in Government of AP rep. by its Prl. Secretary, Agriculture and Co-Operation Department and Anr vs. Pagadala Kanthi and Anr(2010(2)ALD 333) while arguing the case in support of the claim of the appellant as ST-Yerukula. The Counsel for the Appellant has drawn an attention of the appellate authority to the para 13 of the ruling, where in it is observed that "where a tribal man marries a nontribal woman then the offshoot of such wedlock would obviously attain the tribal status".

XII. It is relevant to cite the decision of the Hon'ble High Court of AP which dealt similar facts of the case and given its ruling in respect of the G.O.Ms.No.371. The High Court, held that, "Thus, it is clear that persons belonging to categories of caste indicated under Articles 341 and 342 alone are to be recognised as Scheduled Caste or scheduled Tribe, No claim from persons of third categories as provided by the Government of Andhra Pradesh in GO.Ms.No.371, dated 13-4-1976 be accepted for the purpose of granting benefits to the children born out of the inter-caste marriages from out of the quota meant for either S.C., S.T. or B.Cs.

XIII. The High court further held that "The said G.O., by all means, cannot over-ride the presidential order. As discussed by me above, in W.P.No.14875/85, K.Ramaswamy, J. (as he then was) has held that the said G.O. is ultra-vires to the powers of the executive and runs contrary to the constitution, by an order dated:19-2-1986. Therefore, the petitioner's claim that he is entitled to get the benefit under the said G.O. is meaningless as the said G.O. has been held as ultra-vires by this Court way back in the year 1986".

XIV. The High court finally held that "the petitioner is not entitled to be treated as 'Konda Kapu' and he is also not entitled to the benefits meant for Scheduled Tribe candidates. The third respondent shall issue notification withdrawing the M.B.A. certificate issued to the petitioner, if the said certificate is already issued. The petitioner is not entitled to use the educational certificates obtained on the basis of his admission to colleges in a seat meant for Scheduled Tribe candidate pursuant to G.O.Ms.No.371, dated:13.4.1976 for the purpose of employment or for any other purposes intended to get benefits which are exclusively meant for Scheduled Tribes. (W.S.V. Satyanarayana vs Director Of Tribal Welfare And ... on 16 January, 1996 Equivalent citations: 1996 (1) ALT 170).

XV. Therefore there is no relevance of GO.Ms.No.376 referred in the present case which has been referred by both the appellants and District collector while giving different interpretations in its applicability for the determination of community status of the Appellant herein.

XVI. Now the argument of the appellant on the basis of an observation of the Hon'ble High Court of AP (2010(2) ALD 333) where in a case held that "where a tribal man marries a nontribal woman then the offshoot of such wedlock would obviously attain the tribal status". is to be examined in the light of the decision of the Hon'ble Supreme Court in determining the community status of an individual in such inter caste marriages.

XVII. In Rameshbhai Dabhai Naika vs. State of Gujarat and others, (2012) 3 Supreme Court Cases 400, wherein it was held by Hon'ble Apex Court, that "the legal position that seems to emerge is that in an inter-caste marriage or a marriage between the tribal and non-tribal the determination of the caste of the offspring is essentially a question of fact to be decided on the basis of the facts adduced in each case". The Apex Court further observed that it is wrong and incorrect to read the rule laid down earlier that in an-inter-caste marriage or a marriage between a tribal and a non-tribal, the child must always be deemed to take his/her caste from the father regardless of the attending facts and circumstances of each case.

[Contd..on P.4]

XVIII. In the instant case there is nothing on record to show that the Appellant has ever been treated to be a member of the Scheduled Tribe by the ST-Yerukula community and accepted her to be part of Yerukula-ST community even as per the witnesses examined. Moreover, the Appellant herself married to a person belonging to non-ST caste-Ediga.

XIX. As per section (6) of A.P. (SCs, S.Ts, BCs) Regulation of Issue of Community certificates Act 1993 (Act 6 of 1993), burden of proof that he belongs to such caste, tribe or class shall be on the claimant. The claimant has not discharged her legal burden in the case. The certificate obtained as ST- Yerukula by the appellant shall not stand itself as a proof to his claim. The appellant has to prove the contents there in are true by adducing legal evidence to that effect.

XX. The burden of proof lies on the claimant to prove that she belongs to caste to which she claims to belong. The Appellant failed to discharge her burden in proving her community as ST-Yerukula. The Hon'ble Supreme Court, citing the broad parameters in determining the community status of an individual in Anand vs Committee for Scrutiny and Verification of Tribe Claims, on 8 November, 2011, observed that "Needless to add that the burden of proving the caste claim is upon the applicant. He has to produce all the requisite documents in support of his claim. The Caste Scrutiny Committee merely performs the role of verification of the claim and therefore, can only scrutinize the documents and material produced by the applicant. In case, the material produced by the applicant does not prove his claim, the Committee cannot gather evidence on its own to prove or disprove his claim".

XXI. The Supreme Court in Kumari Madhuri Patil Mnr. Vs. Addl. Commissioner, Tribal Development & Ors case (AIR 1995 SC), took a note of the fact that the benefit of reservation of seats in educational institutions, and other appointments were being denied to the genuine tribals on the basis of false caste certificates. Terming such caste claims as "pseudo status". and further the Supreme Court observed that spurious tribes had become a threat to the genuine tribals and it is also held that when it is found to be a case of fraud played by the concerned, no sympathy and equitable considerations can come to his rescue.

XXII. Considering the facts involved in this case in all respects and considering the relevant law on the point, it is concluded that the Appellant does not belong to a notified ST-Yerukula.

XXIII. In view of the aforesaid reasons, there is no irregularity or illegality in cancelling the community certificate issued to the Appellant herein as ST-Yerukula. Therefore the impugned order passed by the Collector & District Magistrate, Kurnool District, Kurnool, Andhra Pradesh state in Rc.C6/576/M/2015, dated 01-05-2016, cancelling the Social Status caste Certificate as ST (Yerukala) obtained from the Mandal Revenue Officer, Allagadda on 28.06.1999, 04.07.2001 and 30.07.2003 vide 339/29.06.1999, 305/05.07.2001 and 408/30/07/2003 by the Appellant herein is hereby upheld. In the result, Appeal Petition is dismissed. As a sequel interim orders if any passed in the matter shall stand vacated. Appeal is disposed of accordingly.

5. Government after careful examination of the appeal petition and the circumstances stated supra and in exercise of the powers conferred under Section 7(2) of A.P. Scheduled Castes, Scheduled Tribes and Backward Classes Regulation of Issue of Community Certificates Act, 1993 (Act 16 of 1993), and rules made there under, decide that the appeal petition filed by Smt. B. Lokeswari W/o K. Praveen Kumar does not deserve any interference. Hence, the proceedings in Rc.C6/576/N/2015, dated 01.05.2016 of the Collector & District Magistrate, Kurnool are hereby upheld and the appeal petition filed by Smt. B. Lokeswari W/o K. Praveen Kumar is hereby dismissed. The certificate issued by the Mandal Revenue Officer, Allagadda on 28.06.1999, 04.07.2001 and 30.07.2003 vide 339/29.06.1999, 305/05.07.2001 and 408/30/07/2003 to Smt. B. Lokeswari deemed to be cancelled.

6. The Collector & District Magistrate, Kurnool is directed to take necessary consequential action in the matter, as per the A.P. (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 (Act 16 of 1993), and rules made therein.

[Contd..on P.5]

7. The records (Rc.C6/576/M/2016, containing pages NF1-54 and CF 1-351) received from the Collector & District Magistrate, Kurnool are returned herewith in original to the Collector & District Magistrate, Kurnool and he is requested to acknowledge the receipt of the same, immediately.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

KANTILAL DANDE
PRINCIPAL SECRETARY TO GOVERNMENT

To
The Collector & District Magistrate, Kurnool.(we)
(With Original Records) **(BY RPAD)**

Smt. B. Lokeswari W/o. K. Praveen Kumar,
R/o H.No.29-178-10, SBI Colony, 29th Ward,
Nadyal Town and Mandal, Kurnool District.

M/s. Vanga Anitha, Sri L. Ranjith Kumar &
Sri K. Chennakesavulu, Advocates,
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Hill Park Avenue, Hill top Colony, Erramanjil,
Hyderabad.

Copy to:
The Manager,
Sub Divisional Co-Operative Office, Nadyal.

The OSD to Hon'ble Dy. CM(TW).
The PS to Principal Secretary(TW).

// FORWARDED:: BY ORDER //

M. Srinivasa Rao
SECTION OFFICER